

**INVESTIGATIVE AUDIT OF SELECTED RECORDS
OF CHEROKEE CHILDREN AND FAMILY SERVICES, INC.
FOR THE PERIOD OCTOBER 1, 1998, THROUGH DECEMBER 31, 1999**

We have completed our investigative audit of selected books and records of Cherokee Children and Family Services, Inc. (Cherokee). This audit focused on the period October 1, 1998, through December 31, 1999, and the records of the transportation and registration accounts and other relevant records. However this scope was expanded when warranted.

Note: To better illustrate the interconnectedness of events during this time frame, we have included a time line at the end of the Legal Issues.

LEGAL ISSUES

According to documents filed with the Tennessee Secretary of State, Cherokee was chartered as a not-for-profit corporation on December 22, 1989. According to confirmations from the Tennessee Department of Human Services (DHS), the agency received federal funding totaling \$8,579,172.68 during the period January 1, 1998, through December 31, 1999.

WillieAnn (Daugherty) Madison was an officer of Cherokee, acting as executive director since 1992. Mrs. Madison and her husband, John Madison, owned a building located at 4280 Cherry Center Drive. According to lease agreements, the Madisons, acting as Affordable Homes, leased this building to Cherokee.

Officers of not-for-profit corporations in Tennessee are held to certain standards. Section 48-58-403, *Tennessee Code Annotated*, states:

An officer with discretionary authority shall discharge all duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interest of the corporation.

Similarly, the members of the board of directors for a not-for-profit organization have certain standards that they must adhere to. Section 48-58-301, *Tennessee Code Annotated*, "General standards for directors," states:

- (a) A director shall discharge all duties as a director, including duties as a member of a committee: . . .
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

Our audit revealed that on several occasions, Mrs. Madison apparently failed to act in the best interest of Cherokee. In fact, some miscalculations appeared to greatly benefit Mrs. Madison personally at a substantial cost to Cherokee. In addition, our audit revealed that on several occasions, the Cherokee board of directors failed to act in the best interest of the agency.

The board members met approximately once each quarter for a short period of time to discuss the business of Cherokee. There was little evidence the board took an active role in the management of the organization.

One board member, Mr. William Davis, testified during court proceedings (Paul G. Summers, et al. v. Cherokee Children and Family Services, Inc., et al.) as follows:

A. Let me say this. As a Board member I did not know whether we were operating directly for Cherokee [CCFS] or directly for her [Mrs. Madison], I didn't understand that.

Q. Okay. So during Board meetings it was not necessarily clear whether you were operating on behalf of the corporation or operating on behalf of your daughter? [WillieAnn Madison]

A. That's right.

Q. Why did you fail to understand that distinction?

A. Because I thought it was all one.

Q. Okay. As a Board member you thought that the financial affairs of the corporation and the financial affairs of your daughter were the same?

A. Yes.

The board members of Cherokee had a fiduciary duty to Cherokee. As noted by the Court of Appeals of Tennessee in a decision¹ filed September 26, 2002, on page 13:

Thus it is clear that the bargain made with the government, the taxpayers, and the public in return for benefits such as tax exemption is that the organization will be operated for the public good and not to enrich those involved in running it.

The decision goes on to point out:

It is well established that officers and directors of a for profit corporation owe a fiduciary duty to the corporation and its members or shareholders. . . . Directors and officers of nonprofit corporations also owe a fiduciary duty to the corporation.

These statutory standards of conduct for directors and officers of nonprofit corporations are similar to those for their counterparts in for profit corporations. However, because the missions of the two types of corporations are different, the duty of loyalty is defined somewhat differently. The officers and directors of a for profit corporation are to be guided by their duty to maximize long-term profit for the benefit of the corporation and the shareholders. A nonprofit public benefit corporation's reason for existence, however, is not to generate a profit. Thus, a director's duty of loyalty lies in pursuing or ensuring pursuit of the charitable purpose or public benefit which is the mission of the corporation.

1. **ISSUE:** **Unauthorized payment to Madison's of \$147,000**

Based on the above-mentioned lease agreements, Cherokee paid the Madison's \$6,000 per month from June 1996 through January 1999. However, our review of canceled checks revealed that on February 3, 1999, Cherokee made a separate payment to Affordable Homes of \$147,000. The check notations indicated the payment was for "Rent Increase due 7-98 to 12-98 \$126,000.00; Feb. rent \$21,000.00." These calculations indicated that Cherokee had renegotiated the lease with Affordable Homes for the Cherry Center location, increasing the rent payments from \$6,000 per month to at least \$21,000 per month. However, nowhere in the minutes of the meetings of the board of directors is this renegotiation discussed or approved. Likewise, we were unable to locate any agreement between Cherokee and Affordable Homes which supported this payment.

It appears that this undocumented and unauthorized payment of \$147,000 to the executive director was not in the best interest of Cherokee.

¹ Paul G. Summers, et. al. v. Cherokee Children & Family Services, Inc., et. al. Appeal from the Chancery Court for Davidson County No. 00-2988-1, Irvin Kilcrease, Jr., Chancellor, No. 2001-00880-COA-R3-CV-Filed September 26, 2002

2. **ISSUE:** **Questionable “back rent” payment based on inflated square footage**

On March 22, 1999, 45 days after the \$147,000 payment set forth in Issue 1, a resolution authorizing the payment of back rent to Affordable Homes in the amount of \$437,000 for the property located at 4280 Cherry Center Drive, was signed by three of the Cherokee board members. The resolution retroactively increased the monthly rental payments to \$17,500, going back to May 1995. On March 29, 1999, apparently pursuant to that authorization, a check for \$437,000 was issued by Cherokee to Affordable Homes. The following sources document that this back rent was based on Mrs. Madison’s representation of the space as 20,000 square feet:

- The lease document listing the revised monthly rate used to calculate this amount of back rent shows that the revised rate is based on 20,000 square feet of office space at \$10.50/sq.ft.
- A copy of the rent calculation related to this transaction, provided in November 2000 by Cherokee’s attorney, Alan Wade, listed the “Actual Rent Paid” based on 20,000 square feet.

However, tax records indicate that the building had less than half that much raw square footage. In addition, the Madisons were apparently aware of the actual square footage of the building at 4280 Cherry Center Drive. An affidavit from the real estate agent who showed the property to WillieAnn Madison “during the first two weeks of March 1995” stated, “At the time of the showing, I presented a package of information to them with details about the building, including floor plans and ACTUAL SQUARE FOOTAGE. . . .” (Emphasis added). The package of information provided by the real estate agent listed the square footage of the property as 9,648. In addition, according to documents obtained from the Tennessee Real Estate Commission, Mrs. Madison had been a licensed real estate agent since 1988. As a real estate agent, it would appear that she had general expertise in reviewing real estate-related information provided to her; therefore, it would appear that she knew the actual size of the building she purchased.

On March 5, 1999, property at Colony Park Drive was sold at auction. On April 5, 1999, John and WillieAnn Madison obtained deed to the property at a recorded cost of \$1,083,500.

3. **ISSUE:** **Repayment of “back rent”**

Mrs. Madison acknowledged that the rent she charged Cherokee was excessive. In a letter dated May 29, 2000, apparently signed by Mrs. Madison and addressed to the Tennessee Department of Human Services, she stated, “We have recently discovered that our rent for 4280 Cherry Center Drive may have been miscalculated due to a miscalculation of the square footage of the building.” The minutes of the June 12, 2000, meeting of the board of directors of Cherokee included the following notation:

To resolve the matter of the dispute regarding the back rental payment of \$437,000.00, it was moved that the board accept Mrs. Madison's offer to transfer title to the property at 4280 Cherry Center Drive to the Cherokee Childrens & Family Services, Inc.

However, **after Mrs. Madison acknowledged overcharging Cherokee for rent for a period exceeding 4½ years**, the board of directors apparently failed to independently verify the facts of the lease. The minutes of the August 3, 2000, meeting included the following notation:

BE IT RESOLVED that the Board determines and establishes that the amount of rent that it overpaid to Affordable Homes for the period May, 1995 through December, 1999 is \$502,838.00, which represents a debt due from Willieann D. Madison and John Madison to the Corporation.

BE IT FURTHER RESOLVED that Affordable Homes and/or Willie Ann Madison be given the option of conveying the building known as 4280 Cherry Center Drive to the Corporation, provided it has an appraised value of not less than \$502,838.00 or in the alternative that Mrs. Madison and/or Affordable Homes repay the indebtedness in full with good and sufficient funds.

Not until October 17, 2000, after state auditors had questioned the transaction, and a full two months after the board's resolution, did the Madisons convey title to 4280 Cherry Center Drive to Cherokee and pay Cherokee \$32,828 with a check drawn on their personal bank account. This payment and conveyance represented a repayment of overcharge for rent by the Madisons to Cherokee totaling \$502,838.

The Office of the State Attorney General requested a confirmation of the calculations used by Cherokee to determine the overcharge amount. The calculations were provided to the Office of the Attorney General by Cherokee's attorney on November 6, 2000. The calculations used total interior space of the Cherry Center building. Cherokee and Mrs. Madison had been notified by the Department of Human Services on July 10, 2000, that net rentable space was the appropriate measurement in arriving at rent payments. In fact, Department of Human Services personnel analyzed the Cherry Center building in June 2000 for net rentable space pursuant to Cherokee's contract with the state for the 2000 calendar year. This analysis concluded that the Madisons had been including unusable space in the rent calculations. A letter from DHS to Mrs. Madison, dated July 10, 2000, stated "As we have mentioned previously, this contract cannot be charged for the pool and its related areas on the lower floor of the Cherry Center building." The related areas included a pool pump room and shower rooms. This letter was written three weeks before the board accepted the \$502,838 figure for repayment and three months before Mrs. Madison repaid Cherokee for the overcharge in rent. There was no sound business purpose for a day care broker renting a nonfunctioning pool and related space. Had

either Mrs. Madison or the board of directors acted in the best interest of Cherokee, the repayment of overcharged rent would have been substantially more.

A recalculation of the rent overcharge, performed by state auditors and using rentable space at Cherry Center Drive revealed that Cherokee is due an additional \$137,151 for excessive rent charges from the Madisons.

It appears that the WillieAnn Madison was able to generate large payments to herself from Cherokee. In one instance, she paid herself \$147,000 without documentation and without board of directors' authorization. In another case, she paid herself \$437,000 for "back rent" that was created by manipulating the square footage of a building. This payment was also made without the board of directors' authorization.

The Madisons were able to reap a windfall from Cherokee by manipulating the square footage of a building. The monthly rent payments went from \$6,000 to \$21,000 to \$17,500 to \$8,521. However, using the net rentable space as determined by the Department of Human Services and the square foot rate used on each lease contract, the rental payment for the building at Cherry Center Drive should not have exceeded \$6,072 per month.

4. **ISSUE:** **Conflict of interest of the executive director**

Mrs. Madison's dual relationship as officer and landlord to Cherokee created a direct conflict of interest. Conflict of interest transactions with not-for-profits are permitted under state law; however, only if the transaction is fair at the time or the board of directors approves it, knowing all material facts of the transaction. However, Mrs. Madison issued a \$147,000 payment to herself without any apparent board approval. In addition, Mrs. Madison issued a \$437,000 payment to herself by providing misleading information concerning the square footage of a leased building and without any apparent board approval. It appears that neither transaction meets the standards set for approving conflict of interest transactions.

Section 48-58-302, *Tennessee Code Annotated*, states:

- (a) A conflict of interest transaction is a transaction with the corporation in which a director or officer of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director or officer if the transaction was fair at the time it was entered into or is approved as provided in subsection (b).
- (b) A transaction in which a director or officer of a corporation has a conflict of interest may be approved if:

- (1) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board of directors or a committee consisting entirely of members of the board of directors and the board of directors or such committee authorized, approved, or ratified the transaction;
- (2) The material facts of the transaction and the director's or officer's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction; or
- (3) Approval is obtained from:
 - (A) The attorney general and reporter; or
 - (B) A court of record having equity jurisdiction in an action in which the attorney general and reporter is joined as party.

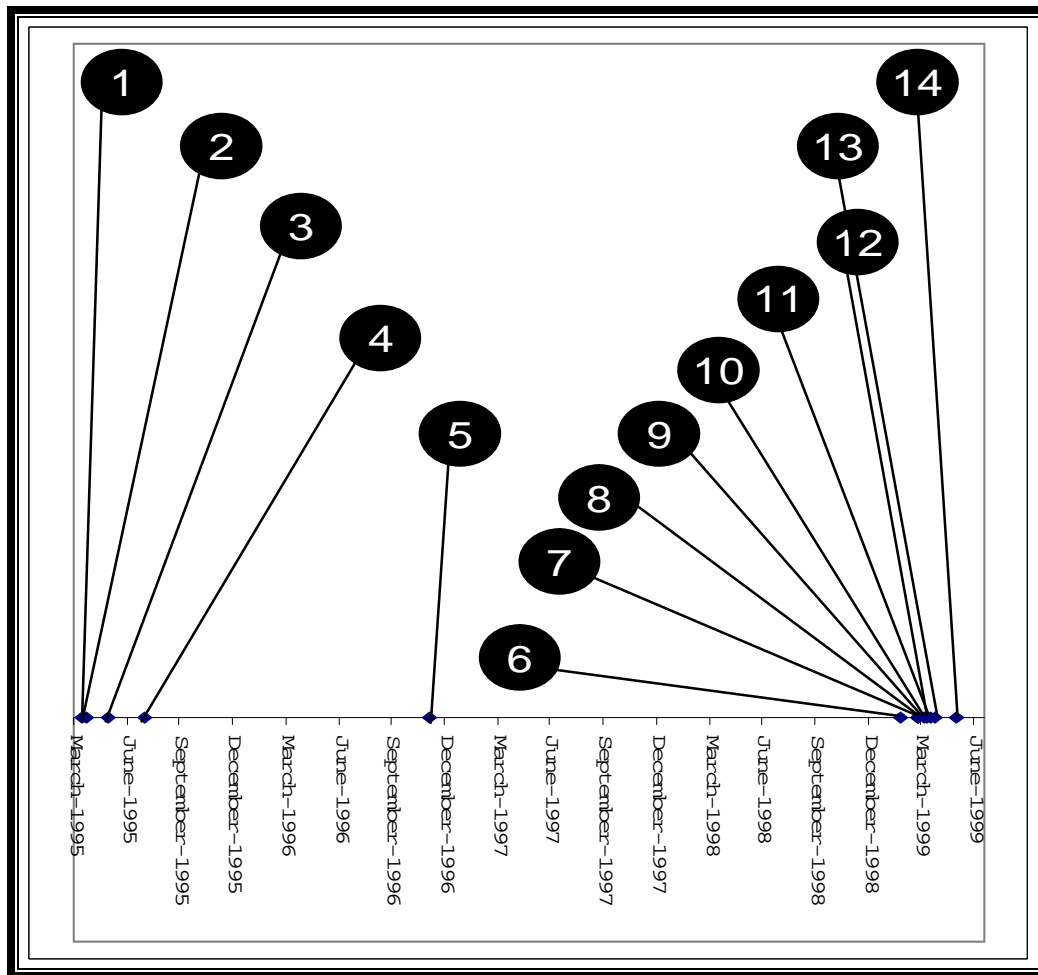
5. **ISSUE:** **Apparent unauthorized bonus**

Based on our review of canceled checks, it appears Cherokee paid the executive director a bonus on December 29, 1999, in the amount of \$50,000. The net amount (after taxes) of the check payable to Mrs. Madison was \$29,275. However, auditors were unable to locate any approval by the Cherokee board of directors for this bonus.

On December 20, 1996, a Cherokee check in the amount of \$35,892.34 was issued payable to Mrs. Madison. The check was apparently a bonus to Mrs. Madison in the amount of \$50,000, net of taxes. Included with the copies of minutes provided to our office by Cherokee officials was an "addendum" which apparently has been provided as evidence of approval for this payment. This "addendum" claims to be an addendum to the December 18, 1996, board minutes. We did not locate minutes for a December 18, 1996, board meeting. The "addendum" was not signed nor does it include a listing of members present. The addendum notes, "The Board felt this was a good idea and then recommended that Mrs. Madison be given the same bonus amount she had received the previous year in the amount of \$50,000.00. It was properly moved and seconded that she be given this bonus." This would appear that Mrs. Madison was properly approved for a bonus of \$50,000 for December 1995. However, the only minutes that reflected a discussion on bonuses during the calendar year 1995 was for the board meeting of June 16, 1995. These minutes stated, "Mrs. Madison asked that the board approve raises and bonuses for the Cherokee Staff as THEY have done such a fine job this year." (Emphasis added.) The minutes do not reflect that the board approved any bonus for the executive director.

Based on information available to us, it appears the bonuses noted above were not authorized.

Timeline of Key Events



1. March 17, 1995—Madison tells board that more office space is needed.
2. March 24, 1995—Madison buys Cherry Center Drive office building.
3. May 1, 1995—Lease is signed for \$4,161.
4. July 1, 1995—Lease renegotiated for \$6,000; no board approval.
5. November 8, 1996—Back rent payment of \$20,229 paid to Madison; no board approval.
6. February 3, 1999—\$147,000 for back rent paid to Madison; no board approval.
7. March 5, 1999 9:00 AM—Madison tells board that additional space is again needed.
8. March 5, 1999 1:00 PM—Madison buys Colony Park property.
9. March 8, 1999—Madison transfers \$600,000 from operating account to investment account.
10. March 16, 1999—Madison transfers \$676,240.85 from investment account to open a new account that only requires one signature on March 17, 1999.
11. March 22, 1999—Resolution dated as signed by 3 board members; no board approval.
12. March 29, 1999—Madison pays herself \$437,000 back rent using a check with only one signature drawn on the new account; no board approval.
13. April 5, 1999—Madisons purchase Colony Park property.
14. May 11, 1999—Madisons sell part of Colony Park to Joyner; board member who signed resolution of March 22, 1999.

FINDINGS

1. **FINDING:** **Members of the board of directors failed to act “in good faith”**

Cherokee Children and Family Services, Inc., (Cherokee) leased office space from Affordable Homes, a business owned by Cherokee’s executive director, Mrs. WillieAnn Madison. On March 22, 1999, three of the members of the board of directors of Cherokee signed a resolution authorizing a payment for “back rent” to Affordable Homes in the amount of \$437,000. On March 29, 1999, apparently pursuant to that resolution, a check for \$437,000 was issued to Affordable Homes from Cherokee’s money market bank account.

We reviewed the working papers for the audit of Cherokee’s financial statements for the period of our examination, performed by the agency’s independent certified public accounting firm. During this working paper review, the auditor indicated that when asked by Cherokee’s board of directors, he had discouraged their authorizing the payment for back rent. According to the auditor, the initial estimate of the back rent payment was “about \$100,000.”

We obtained a copy of a letter dated May 29, 2000, to the Tennessee Department of Human Services (DHS), apparently signed by Cherokee’s executive director, stating that officials of Cherokee had discovered a “miscalculation” of the square footage of the building being rented. The letter states:

We recently employed an appraiser to measure the actual square footage of the building. This calculation reflects that the square footage is 9,738 square feet rather than the 20,000 included in the lease.

The letter further states:

In light of this recent finding, myself and the Board members have negotiated a new rental agreement with our lessor. . . . We would, therefore, propose that our rent, for 4280 Cherry Center Dr., be adjusted for 2000 from \$210,000.00 a year to \$102,249.00.

Section 48-58-301, *Tennessee Code Annotated*, “General standards for directors,” states:

- (a) A director shall discharge all duties as a director, including duties as a member of a committee:

(1) In good faith . . .

(b) In discharging such duties, a director is entitled to rely on information. . . if prepared or presented by . . .

(2) Legal counsel, public accountants. . . .

Apparently, the agency's independent certified public accountant discouraged the agency's board from authorizing the payment of back rent to the company owned by the agency's executive director. However, the board chose to ignore the accountant's advice, approving a retroactive rent increase payment calculated using a rental rate specified in an agreement in which the area of the rented building on which the rate was based was overstated by more than 100 percent. This action does not appear to be "in good faith."

2. **FINDING: Members of the board of directors failed to act in best interests of the corporation**

As noted in Finding 1, Cherokee leased office space from Affordable Homes, a business owned by the agency's executive director, Mrs. WillieAnn Madison. Also, as addressed in Finding 1, on March 29, 1999, a check for \$437,000 was issued to Affordable Homes from Cherokee's money market bank account. The minutes of the meeting of the board of directors dated June 12, 2000, included the following notation, "To resolve the matter of the dispute regarding the back rental payment of \$437,000.00, it was moved that the board accept Mrs. Madison's offer to transfer title to the property at 4280 Cherry Center Drive to the Cherokee Childrens & Family Services, Inc." The minutes of the meeting of the board of directors dated August 3, 2000, which were not signed, included the following resolution:

BE IT RESOLVED that the Board determines and establishes that the amount of rent that it overpaid to Affordable Homes for the period May, 1995 through December, 1999 is \$502,838.00, which represents a debt due from Willieann D. Madison and John Madison to the Corporation.

BE IT FURTHER RESOLVED that Affordable Homes and/or Willie Ann Madison be given the option of conveying the building known as 4280 Cherry Center Drive to the Corporation, provided it has an appraised value of not less than \$502,838.00 or in the alternative that Mrs. Madison and/or Affordable Homes repay the indebtedness in full with good and sufficient funds.

Notwithstanding these resolutions by the board to collect from the agency's executive director for the overcharges for rent totaling more than one-half million dollars, the repayment still had not been collected when, over two months later, on October 6, 2000, our office raised the question of the back rent payment in a letter and information

package. This package was apparently presented to attorneys for Cherokee in connection with litigation pending at the time, and subsequently, on October 17, 2000, repayment of the overcharges for rent was made by the Madisons to Cherokee. Apparently, the members of the board of directors failed to ensure that repayment for the rent overcharges was collected as directed by the board in the recorded minutes of two meetings. This lack of action on the part of the members of the board appears to violate Section 48-58-301, *Tennessee Code Annotated*, “General standards for directors,” which states:

- (a) A director shall discharge all duties as a director, including duties as a member of a committee: . . .
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

3. **FINDING: Members of the board of directors failed to ensure assets were protected**

As noted in Finding 1, a check for \$437,000, dated March 29, 1999, was issued from Cherokee’s money market bank account to Affordable Homes, a business owned by the executive director of Cherokee, for back rent on the building occupied by the agency. The check was not prenumbered and appeared to be the first check written from this account, which was opened March 17, 1999, five days **prior** to the date, three members of the board approved the payment for back rent. Checks written on this account apparently required **only** the signature of the executive director. Money to open this account was transferred from the Cherokee operating bank account to another Cherokee bank account and then to the Cherokee money market bank account from which the \$437,000 check was finally issued. The operating account checks we observed which were written during this period of time all had **two** signatures, those of Mrs. Madison and board member Ida M. Porter. According to the resolution approving the payment of the \$437,000, Ms. Porter was not present at the meeting during which the back rent was approved.

Accounting and Financial Reporting for Not-For-Profit Recipients of Grant Funds in Tennessee, Section 6, page 8, item 9, recommends, “All checks should be signed by **two** authorized individuals.” (Emphasis added.)

Section 48-58-301, *Tennessee Code Annotated*, “General standards for directors,” states:

- (a) A director shall discharge all duties as a director, including duties as a member of a committee: . . .
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

Internal controls such as requiring two signatures on all checks certainly would appear to be in the best interest of the corporation.

4. **FINDING:** **Members of the board of directors failed to institute internal controls to prevent unauthorized payment**

Our review of canceled checks revealed that Cherokee's operating account check no. 3915 for \$147,000 to Affordable Homes was paid by the bank on February 3, 1999. WillieAnn Madison and Ida Porter signed the check for Cherokee. The memo line of the check indicated that the check was for "Rent Increase due 7-98 to 12-98 \$126,000.00; Feb. rent \$21,000.00." This indicates that Cherokee had renegotiated the lease with Affordable Homes for the Cherry Center location, increasing the rent payments to at least \$21,000 per month. However, auditors were unable to locate any mention of this renegotiation in the minutes of the meetings of the board of directors. Likewise, we were unable to locate any agreement between Cherokee and Affordable Homes which supported this payment.

Section 48-58-301, *Tennessee Code Annotated*, "General standards for directors," states:

- (a) A director shall discharge all duties as a director, including duties as a member of a committee: . . .
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

It would appear that making a payment of \$147,000 to a business owned by the agency's executive director for an unauthorized rent increase would not be in the best interests of the corporation. Furthermore, it appears the board members abdicated their responsibilities by failing to institute internal controls to detect and/or prevent such transactions.

5. **FINDING:** **Unauthorized use of advance payments**

Section 71-1-204, *Tennessee Code Annotated*, authorizes advance payments from the state to certain organizations that provide social services to third parties. However, the use of such advances is limited by Section 71-1-204 of the code, which states:

Funds provided under this part shall be used to cover costs incurred by third party social services contractors to cover necessary capital expenditures, to provide cash flow, or for other

proper purposes where payment in cash and cost reimbursement is unacceptable.

Cherokee Children and Family Services (Cherokee) requested advances from the Department of Human Services (DHS) on two separate occasions purportedly to enable the broker agency to make payments for transportation and registration to child care providers. In a memorandum dated February 20, 1999, requesting the second advance, the executive director, WillieAnn Madison, stated, “. . . I found that in order to make the payments to the providers by the end of the month with no problems, Cherokee Children and Family Services will need an additional advance of \$140,000.00.” The executive director had made a similar request dated November 13, 1998. DHS approved and paid advances to Cherokee of \$222,060 on November 27, 1998, and \$140,000 on February 25, 1999.

Our review of selected bank records of Cherokee revealed that in fact the agency did not require any of the 1999 advance payment in order to provide cash flow for payments to child care providers for transportation and registration services. Our review further revealed that check number 2874 drawn on a Cherokee bank account in the amount of \$200,000, dated January 13, 1999, was made payable to Memphis First Community Bank, apparently for the purchase of bank stock in the name of Cherokee. Furthermore, a check drawn on a Cherokee bank account in the amount of \$147,000, dated February 3, 1999, was made payable to a business owned by the executive director for “rent increase.”

In addition, it should be noted that the executive director’s memorandum cited above stated, “This would bring our total advance to \$362,060.00 **which we intend to repay by June 30, 1999.**” (Emphasis added.) However, the advances were not repaid until February 29, 2000, one month after our office notified Cherokee officials that we would begin an examination of the records of Cherokee and eight months after the self-imposed deadline.

6. **FINDING: Members of the board of directors failed to institute internal controls to prevent violation of the purpose of the corporation**

Our review of selected records revealed several expenditures that did not appear to further the purposes of the corporation. A partial listing of these expenditures follows this finding.

WillieAnn Madison incorporated Cherokee as a not-for-profit public benefit corporation in December 1989. According to a charter amendment made April 19, 1990, the purposes of the corporation were:

. . . to provide transitional child care services for children of low-income families referred by the Department of Human Services. Funds for this project are provided by Federal and State block

grants which are used for tuition payments and administrative expenses.

The services provided by CCFS include listing and classification of child care providers, referrals of qualified families to appropriate child care centers, and the monitoring and supervision of each placement under guidelines provided by DHS. Upon the dissolution of CCFS, all remaining assets will be returned to the Federal and State offices which supplied the original grants.

The Court of Appeals of Tennessee at Nashville in the decision referenced at the beginning of this report noted:

. . . Thus, a director's duty of loyalty lies in pursuing or ensuring pursuit of the charitable purpose or public benefit which is the mission of the corporation. "The central purpose of fiduciary duties of officers and directors of nonprofit corporations is to ensure that a corporation's resources are used to achieve the corporation's purposes and **not to enrich the directors.**" (Emphasis added.)

The list of questioned expenditures mentioned earlier in this finding are shown below. **It should be noted this listing is only a sample of expenditures that did not appear to further the purposes of the corporation.**

Questioned Expenditures				
Date	Check No.	Payee	Purpose	Amount
10/15/98	3686	Direct TV	Statement for Willie Madison	\$ 38.86
05/29/99	10305	American Express	➤ Carnival Cruise Res. - Miami	4,000.00
			➤ Carnival Cruise Res. - Miami	3,962.00
			➤ Carnival Cruise Res. - Miami	3,962.00
01/23/97	2561	American Express	➤ Presidential Inaugural Washington Inaugural Event	314.00
			➤ Grand Hyatt - Washington DC	1,701.00
			➤ Grand Hyatt - Washington DC	1,701.00
09/06/98	3574	American Express	➤ Holiday Inn Republique - Paris, France	303.84
			➤ Machupichu - Paris, France	189.73
			➤ Selfridges Limited -	800.21

Questioned Expenditures				
Date	Check No.	Payee	Purpose	Amount
			London, United Kingdom ➤ Tuxedo Paris - Paris, France ➤ Cumberland Hotel - London, United Kingdom ➤ Holiday Inn Republique - Paris Cedexll France ➤ Cumberland Hotel - London, United Kingdom ➤ Cumberland Hotel - London, United Kingdom ➤ Cumberland Hotel - London, United Kingdom ➤ Neiman Marcus Mail - Dallas, Texas - One Button slk. Shntng	122.18 107.93 968.31 344.38 1,474.32 1,286.23 283.00
Illegible	2949	American Express	Aloha VIP Tours in Honolulu Tours/Activities	3,375.84
12/17/97	3129	American Express	Neiman Marcus Mail Dallas, Texas 6.7 oz. Bulgari Body Cream	92.50
10/17/97	3066	American Express	Williams-Sonoma Memphis Gourmet Kitchen Product	1,428.73
09/19/97	3018	American Express	➤ Montblanc #521 - Honolulu ➤ Outrigger Reef Hotel - Honolulu ➤ Outrigger Reef Hotel - Honolulu ➤ Outrigger Reef Hotel - Honolulu	280.73 25.89 90.90 40.45
Total				<u>\$26,894.03</u>

CONCLUSION

The board members failed to fulfill their fiduciary duty to oversee the management of Cherokee. As a result, the not-for-profit organization abandoned its charitable purposes and devoted itself to private purposes. In response, the Attorney General for the State of Tennessee filed suit to dissolve Cherokee. The trial court ordered the appointment of a receiver to marshal and preserve the remaining assets of the organization. Attorneys for the organization appealed the trial court's decision. On September 26, 2002, the Court of Appeals of Tennessee at Nashville affirmed the decision of the trial court.